

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL ACTION NO. 3:18-CV-103-LG-LRA

JOHN PEMBERTON

DEFENDANT

COMPLAINT

Plaintiff United States of America, by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorneys for said District, on behalf of its agency, the United States Department of Education, alleges the following in support of its Complaint against Defendant John Pemberton:

I. Parties and Nature of Action

1. This is a civil action brought by Plaintiff United States to collect a student loan debt from Defendant Pemberton under the U.S. Department of Education's William D. Ford Federal Direct Loan Program. 20 U.S.C. § 1087a *et seq.*; 34 C.F.R. Part 685.

II. Jurisdiction and Venue

2. This Court has jurisdiction over an action under 28 U.S.C. §§ 1331 and 1345.
3. Venue is proper in the Southern District of Mississippi under 28 U.S.C. § 1391 because Pemberton resides in Madison, Mississippi.

III. Facts

4. In 1995, Pemberton applied for and was granted a William D. Ford Federal Direct Consolidation Loan (Direct Consolidation Loan) from the U.S. Department of Education,

authorized under Title IV, Part D of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087a *et seq.* The Direct Consolidation Loan's details are more particularly set out in the U.S. Department of Education's Certificate of Indebtedness, attached as Exhibit A. *See* Ex. A (Certificate of Indebtedness).

5. On or about February 1, 1995, Pemberton signed a Federal Direct Consolidation Loan Application and Promissory Note by which he promised, in exchange for his receipt of funds from the Direct Consolidation Loan, to repay the Direct Consolidation Loan with interest, fees, and U.S. Department of Education's collection costs, including attorney's fees.

6. Through the Direct Consolidation Loan, the U.S. Department of Education disbursed to Pemberton \$21,885.09 on or about May 5, 1995, at "a variable rate of interest to be established annually." Ex. A (Certificate of Indebtedness).

7. On or about January 22, 2013, Pemberton defaulted on the Promissory Note by failing to make payments when due.

8. After Pemberton's default, the U.S. Department of Education capitalized \$20,729.73 in unpaid interest and declared the entire outstanding Direct Consolidation Loan balance due immediately, as authorized by the Promissory Note's acceleration clause.

9. As of November 22, 2017, Pemberton owed the U.S. Department of Education \$50,340.22 on the Direct Consolidation Loan taken in 1995, comprised of \$42,329.53 principal plus \$8,010.69 accrued interest through November 22, 2017. Additional interest accrues on the principal amount at the annual rate of 4.08 percent and a daily rate of \$4.73 until the date judgment is entered, and thereafter at such rate as the U.S. Department of Education establishes pursuant to Section 455(b) of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087e. *See* Ex. A (Certificate of Indebtedness).

Count I – Breach of Contract

10. The United States incorporates the foregoing paragraphs of the Complaint as if fully restated herein.

11. Pemberton formed a contract with the U.S. Department of Education when he signed the Promissory Note by which he promised, in exchange for his receipt of the funds from the Direct Consolidation Loan, to repay the Direct Consolidation Loan with interest, fees, and the U.S. Department of Education's collection costs, including attorney's fees.

12. Pemberton materially breached the Promissory Note by failing to make payments of his Direct Consolidation Loan debt when due, and he has persisted in that failure through the present date.

13. Pemberton's material breach of the Promissory Note has caused the United States to suffer damages in the amount of \$50,340.22 as of November 22, 2017, plus future interest at the rate of \$4.73 per day until the date judgment is entered, plus post-judgment interest at the statutory rate thereafter.

Prayer for Relief

The United States respectfully requests that the Court enter judgment in its favor, as follows:

a. That Pemberton materially breached the Promissory Note by failing to make payments on his Direct Consolidation Loan debt, as required therein;

b. That, due to Pemberton's material breach of the Promissory Note, Pemberton is liable in damages to the United States in the amount of \$50,340.22, as of November 22, 2017; plus daily prejudgment interest in the amount of \$4.73 from November 22, 2017, until the judgment date; plus post-judgment interest at the statutory rate on and after the judgment date;

c. That Pemberton is liable for the U.S. Department of Education's collection costs, including reasonable attorney's fees and litigation costs, including filing fee costs in the amount of \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee) in favor of the United States, pursuant to 28 U.S.C. § 2412(a)(2); and

d. All other relief in favor of the United States that the Court deems just and proper.

DATED: February 16, 2018

Respectfully submitted,

D. MICHAEL HURST, JR.
United States Attorney

BY: /s/ Kristi H. Johnson
KRISTI H. JOHNSON
Assistant United States Attorney
501 East Court Street, Suite 4.430
Jackson, MS 39201
Mississippi Bar No. 102891
(601) 965-4480
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**U. S. DEPARTMENT OF EDUCATION
SAN FRANCISCO, CALIFORNIA**

CERTIFICATE OF INDEBTEDNESS #1 OF 1

JOHN M PEMBERTON
AKA JOHN MARSHALL PEMBERTON
103 GUNSTON CT
MADISON, MS 39110
Account No. XXXXX7444

I certify that U.S. Department of Education records show that the BORROWER named above is indebted to the United States in the amount stated below plus additional interest as of 11/22/17.

On or about 02/01/95, the BORROWER executed a promissory note to secure a Direct Consolidation loan from the U.S. Department of Education. This loan was disbursed for \$21,885.04 on 05/05/95 at a variable rate of interest to be established annually. The loan was made by the Department under the William D. Ford Federal Direct Loan Program under Title IV, Part D of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087a et seq. (34 C.F.R. Part 685). The Department demanded payment according to the terms of the note, and the BORROWER defaulted on the obligation on 01/22/13. Pursuant to 34 C.F.R. § 685.202(b), a total of \$20,729.73 in unpaid interest was capitalized and added to the principal balance.

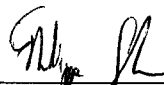
The Department has credited a total of \$145.00 in payments from all sources, including Treasury Department offsets, if any, to the balance. After application of these payments, the BORROWER now owes the United States the following:

Principal:	\$42,329.53
Interest:	\$8,010.69
Total debt as of 11/22/17:	\$50,340.22

Interest accrues on the principal shown here at the current rate of 4.08 % and a daily rate of \$4.73 through June 30, 2018, and thereafter at such rate as the Department establishes pursuant to Section 455(b) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087e.

Pursuant to 28 U.S.C. § 1746(2), I certify under penalty of perjury that the foregoing is true and correct.

Executed on: 12/20/17



Loan Analyst
Litigation Support Unit

EXHIBIT "A"

Philippe Guillon
Loan Analyst

CIVIL COVER SHEET

3:18-CV-103-LG-LRA

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Marc A. Perez, AUSA; Kristi H. Johnson, AUSA
501 E. Court Street, Suite 4.430
Jackson, MS 39201 (601) 965-4480

DEFENDANTS

JOHN PEMBERTON

County of Residence of First Listed Defendant MADISON
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Andrew S. Respass
Galloway Johnson Tompkins Burr & Smith
New Orleans, LA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

20 U.S.C. § 1087

Brief description of cause:

This is a civil action to collect debt owed to the United States

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
50,340.22

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 2/16/18
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

MARC A. PEREZ, AUSA; KRISTI H. JOHNSON, AUSA

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____